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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

H.D. GROSS and HELEN GROSS,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

Questions presented in this case are whether the administration of Amendment XVI to the Constitution of the United States providing for an income tax must be with reference to the provisions of Article I, Section 8, Clause 1 which requires that taxes be laid uniformly throughout the United States.

The case presents the further question of whether or not the appellee should be permitted to declare that all bank deposits are taxable income in a case where a taxpayer has kept accurate records of taxable income.

PARTIES TO THE PROCEEDING BELOW

All parties appear in the caption of the case in the United States Supreme Court.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is printed in Appendix "A" hereto. It has not been published in the Federal Reporter pursuant to Rule 21(c) of that Court.

JURISDICTION

The grounds on which the jurisdiction of the Court is invoked are that the income tax amendment to the United States Constitution is not being administered in accordance with the requirement of uniformity and that the procedure of appellee in declaring that all bank deposits are taxable income is a deprivation of due process of law in a case where a taxpayer has kept accurate records of taxable income.

The nature of the proceeding below is the review of a claim for a tax refund for 1976 and 1977.

The judgment petitioner seeks to have reviewed is dated January 3, 1984 and was entered on that date.

The jurisdiction of this court is invoked under Section 1257(2) of Title 28 of the United States Code.

The following cases sustain jurisdiction: Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916); Holland v. United States, 348 U.S. 121, 132 (1954).

A copy of the judgment of the Court of Appeals for the Ninth Circuit is included in Appendix "A" appended hereto.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, Clause 1:

"Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of

the United States; but all duties, imposts and excises shall be uniform throughout the United States. . . ."

STATEMENT OF CASE

H.D. Gross had been self-employed in the construction industry for a period of over twenty years prior to the tax years of 1976 and 1977. He had regularly and accurately kept account of all income declared taxable by the Internal Revenue Code. He did not keep records of bank deposits with regard to whether such deposits were transfers from one account to another, deposits of tax-free municipal bond income, gifts, or other non-income items.

For the audit of the tax years in question, appellee demanded, without any reasonable cause or justification, that H. D. Gross "back out" from his total of bank deposits all the deposits which were not taxable. H. D. Gross declared that he had not kept records of non-taxable deposits but that his taxable income was as specified on his income tax returns. Appellee thereupon declared that all bank deposits were taxable income.

H. D. Gross paid the tax and challenged the said determination in a complaint filed in the Federal District Court. He also contended that the constitutional amendment which provided for an income tax was not being administered in accordance with the requirement that all taxes be uniform through-

out the United States.

The trial court granted summary judgment to appellee and refused to permit H. D. Gross to have a trial on the question of whether or not his records of income were in fact accurate. The trial court granted summary judgment on the question of the proper administration of the income tax law.

H. D. Gross appealed to the United States Court of Appeals for the Ninth Circuit and the judgment of that Court is included in Appendix "A" appended hereto.

SUBSTANTIALITY OF FEDERAL QUESTIONS

The deprivation of due process of law by the procedure employed by the appellee in making a determination that all bank deposits are income is substantial in a case where a taxpayer for many years has demonstrated his integrity and honesty in disclosing all income and where the taxpayer is prevented from having a trial on the question of the accuracy of his accounting of taxable income.

The contention that the income tax under the Sixteenth Amendment must be applied equally throughout the United States is significant and substantial and has been the subject of recent debate in Congress.

Agreement therewith by this Court would result in the transformation of appellee's ability to use the income tax law to control social policy and would result in equality in right, in protection and in burden between persons subject to the tax.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

Respectfully Submitted,
Peter Amschel
Counsel for Appellant

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

H.D. GROSS and HELEN GROSS,

Plaintiff/Appellant,

vs.

UNITED STATES OF AMERICA,

Defendant/Appellee.

No. 83-5575
D.C. No. CV 82-2236-R

MEMORANDUM

FILED
Jan. 3, 1984
Phillip B. Winberry
Clerk, U.S. Court of Appeals

On Appeal from the United States
District Court for the
Central District of California
Hon. Manuel L. Real,
District Judge, Presiding

Submitted -- October 20, 1983

Before: TANG, FERGUSON and BOOCHEVER,
Circuit Judges.

H. D. Gross and Helen Gross[1] appeal from the summary judgment order in favor of the United States and the dismissal with prejudice of their claim for a tax refund for 1976.

Gross contends that in the taxable year 1976 and 1977 his traveling expenses to Hemet, California are deductible as business expenses. Gross failed to produce evidence sufficient to support his claim of business deductions. Commissioner v. Flowers, 326 U.S. 465 (1946); Neal v. Commissioner, 681 F.2d 1157 (9th Cir. 1982). We have reviewed the documents excluded by the district court, and find that even if they were admitted into evidence they do not provide the necessary support.

Gross's argument that the progressive income tax is unconstitutional is

frivolous. Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916). His contention that the bank deposit method of determining taxable income may not be used to determine taxable income where a taxpayer has records of his expenses is similarly without merit. Holland v. United States, 348 U.S. 121, 131 (1954). Gross failed to present proof to rebut the IRS's assessment of taxable income. Lewis v. Commissioner, 560 F.2d 973, 976 (9th Cir. 1977). No issue of material fact exists. Summary judgment, therefore, was proper.

AFFIRMED.

1. Helen Gross is a party only because she and her husband filed joint tax returns. All references to taxpayer are to E. D. Gross.